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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
APPELLANT,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON,
PERSONALLY AND AS MEMBERS OF THE
SOUTH CAROLINA TAX COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

FILED DECEMBER 15, 1930

(35,518)

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IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

In Equity

GRANITEVILLE MANUFACTURING COMPANY, Plaintiff and Petitioner,

vs.

W. G. QUERY, J. P. DERHAM, and F. C. ROBINSON, as Members of South Carolina Tax Commission, Defendants and Respondents

AMENDED BILL OF COMPLAINT—Filed July 17, 1930

To the Honorable the District Judge of the Eastern District of South Carolina:

The plaintiff or petitioner complaining of the defendants or respondents, respectfully shows unto the Court:

1

That Graniteville Manufacturing Company (hereinafter referred to as the plaintiff) is a corporation duly chartered under the laws of the State of South Carolina, having its principal place of business in the Town or Settlement of Graniteville in Aiken, South Carolina.

2

That this is a suit of a civil nature in equity in which the matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars, and which arises under the Constitution of the United States, the jurisdic- [fol. 3] diction of the Court being invoked under the provisions of Section 24 of the Judicial Code of the United States.

3

That the defendants, W. G. Query, J. P. Derham, and Frank C. Robinson are citizens, residents, and inhabitants

of the State of South Carolina, and that they are the duly and legally appointed, qualified, and acting members of South Carolina Tax Commission; and as such members of said commission or board, which is an administrative board or commission, so constituted by the statute laws of the State of South Carolina, they are charged with the collection of certain taxes for the State of South Carolina, including particularly those taxes sought to be imposed by the Acts hereinafter specifically referred to, and in the matters hereinafter referred to they are proceeding to the enforcement and execution of such tax statutes. That they have their offices and transact their business in Columbia in the Eastern District of South Carolina.

That said defendants employ various agents, inspectors, attorneys, and field agents, who visit the various counties in the State to make inspections; that one of said field agents is E. H. Bowers, who has visited the offices of the plaintiff herein at Graniteville in Aiken County, South Carolina, and has done and performed certain acts hereinafter referred to, as the agent for defendants, and for said defendants in the assessment of a tax hereinafter set out. That Aiken County is situate in the Eastern District of South Carolina, and that this cause of action arose therein.

4

That for a number of years last passed, and specifically [fol. 4] including a period running from July 24, 1923, to March 12, 1930, in financing the operations of the plaintiff, it has been the custom of said plaintiff to borrow various large sums of money from banks, some of which are situate within the State of South Carolina, and some of which are situate without the State of South Carolina. That while its executive officers were Messrs. Jacob Phinizy and Coles Phinizy, both of whom resided in Augusta, Georgia, its notes were generally executed in Augusta, Georgia, and were there delivered to the banks in question or were mailed from Augusta, Georgia, to said banks where situated. That the whole of such transactions were carried on outside of this State. That this was the course of action prior to December 1, 1924.

That since said date the course of action has been that in each instance a paper of the form hereinafter set out

was executed by the President or some Executive Officer of the Graniteville Manufacturing Company at Graniteville, South Carolina. That said paper made in favor of banks existing at and located at points beyond the limits of the State of South Carolina, during the period referred to, were made to Chemical National Bank, State Bank of New York, E. Naunberg, Chase National Bank, and Bank of Manhattan Trust Company, all of New York City; to Citizens & Southern Bank, Georgia Railroad Bank, and National Exchange Bank of Augusta, Georgia, all of Augusta, Georgia; and to State Street Trust Company of Boston, Massachusetts, none of which banks are located or do business in South Carolina.

That the further custom and practice, and course of dealing between this plaintiff and each of said banks was that, [fol. 5] in each instance, at the office of the Bank, a line of credit was first established between the banks and the plaintiff—that is to say, an agreement was made that the plaintiff's borrowing from said banks should never exceed a certain amount, each specific loan to be made thereafter being subject to acceptance by the specific bank from whom it was sought. That thereafter, when a loan was desired, said bank having been notified that a loan would be desired by a certain date, and an inquiry having been made of it as to the then existing discount rate, that a paper of the purport hereinafter set out would be signed by the President, or other Executive Officer of the plaintiff, at the offices of the plaintiff in Graniteville, Aiken County, South Carolina, and said paper would be forwarded to the bank in question, either in New York or in Augusta, Georgia, or in Boston, Massachusetts, by United States mail. That said paper was subject to withdrawal and revocation by the plaintiff until it was actually received by the bank in question in the City of New York, or in the City of Augusta, Georgia, or in the City of Boston, Massachusetts, and until said paper was after its receipt in New York or Augusta, or in Boston, was accepted by said bank, and until the proceeds thereof were actually placed to the credit of this plaintiff. That in each instance said paper became effective as a note only upon its final acceptance in New York City, in the City of Boston, or in the City of Augusta, Georgia, after its receipt at said point by said bank and its acceptance by said bank, at which time, and only at which time,

the proceeds of said paper were placed to the credit of the [fol. 6] plaintiff in the bank in question, either in New York City, in the City of Boston, or in the City of Augusta, Georgia, at which time alone said transaction was completed and, as this plaintiff alleges, said paper signed in Graniteville, South Carolina, then aud then alone in reality became a note or commercial paper.

5

That each of said notes was executed upon a printed form, which form reads as follows:

"Graniteville Manufacturing Company,

Graniteville, South Carolina

No. — —— —, 192-.

"On —— —, ——, for value received, we promise to pay $— thousand dollars, to the order of —— ——, at their banking house in ——.

"Graniteville Manufacturing Company."

That in each instance the date and the amount involved and the name of the bank was filled in, and in each instance the blank provided for the place where the note was to be paid was filled in to read either in New York, N. Y., or in Boston, Massachusetts, or in Augusta, Georgia; and in each instance the note in question was in reality paid to the bank in question upon its maturity either in the City of New York, in Boston, Massachusetts, or in the City of Augusta, Georgia.

6

When each of said notes was paid, that in each instance it was marked paid or cancelled, and in many instances was actually perforated to show its payment, retirement, and cancellation, and was returned to the plaintiff at its office [fol. 7] in Graniteville, South Carolina.

7

That throughout the years this plaintiff, acting as it believed within its legal rights and in absolute good faith and not with any purpose of evading any just tax, has not

placed any South Carolina documentary stamps upon the notes which were negotiated with and placed with the banks situated in New York, N. Y., Boston, Massachusetts, and in the City of Augusta, Georgia. This plaintiff has from time to time borrowed funds and placed notes with banks located within the States of South Carolina, and has always fully stamped said notes with the South Carolina documentary stamps as required by law.

8

That the State of South Carolina has from time to time passed various acts, requiring the affixing of documentary stamps as a tax measure, upon various documents. These Acts are as follows, and reference is made to the specific terms of each of said Acts, to-wit:

Act No. 11, page 12, Acts of 1923,
Act No. 197, page 299, Acts of 1925,
Act No. 445, page 897, Acts of 1926,
Act No. 73, page 122, Acts of 1927; and
Act No. 574, page 1089, Acts of 1928.

That each of said Acts purports to place a documentary stamp on notes, bonds, debentures, or certificates of stock, or indebtedness for and in respect of the vellum parchment or paper upon which said instrument made, or thing, or [fol. 8] any of them, are written or printed, as appears by reference to the specific Acts in question.

9

That on or about the 14th day of May, 1930, the defendants through their field agent, E. H. Bowers, visited the plaintiff at its office in Graniteville in Aiken County, in the Eastern District, and on being accorded, at his request, full opportunity to examine the files and the cancelled notes of this plaintiff in its office, for and as the act of the defendants and as their order claimed to be under and pursuant to the aforesaid Statutes, assessed a tax against this plaintiff of five thousand, twenty, and 46/100 dollars ($5,020.46), arising out of the fact that beginning with the 24th day of July, 1923, which was the date of the first paper executed by this plaintiff in favor of a Bank situate beyond the limits of the State of South Carolina, after the Act of 1923 became effective, down to the date of his said

inspection, this plaintiff had refrained from placing documentary stamps upon notes given to, sent to, and negotiated with its bankers residing and doing business beyond the limits of the State of South Carolina, and upon the ground that had said documentary stamps of the State of South Carolina been placed upon said notes that the plaintiff would have paid the sum of five thousand twenty and 46/100 dollars for the said stamps, which sum would have gone to the State of South Carolina as a tax or taxes. That the course of action of the defendants in connection with documentary stamps now is, and throughout the period in question has been, to place the same with various agents usually connected with banks, which banks directly pay the [fol. 9] State the amount of said stamps when said stamps are ordered, and said stamps are then sold to the public by said banker or agent for cash. That at the present time the only agent in the County of Aiken is the Farmers and Merchants Bank of Aiken, who refused to sell said stamps save unconditionally and for cash; and no legal method exists to buy said stamps directly from the defendants except unconditionally and for cash.

That when said tax, for the reasons and for the purposes herein stated, was assessed, a schedule thereof was left with said plaintiff showing the dates of the various notes in question, the Bank to whom said note was made, the amounts thereof, and the alleged tax which the defendants claimed should have been paid in each instance by the affixing of documentary stamps to each of said notes. That a copy of said schedule is hereto attached as Exhibit "A" of this complaint. That said schedule shows that the amount claimed by the State in stamps which should have been attached to said notes, amounts to the sum of five thousand twenty and 46/100 dollars; and thereupon the defendants claiming to do the same, pursuant to the aforesaid Statutes of South Carolina, directed and ordered the plaintiff to pay said accrued taxes in said amount by purchasing from an agent of the Tax Commission stamps amounting to said sum of five thousand twenty and 46/100 dollars, and to affix the same to the aforesaid cancelled notes; and to cancel said stamps; and said defendants are now threatening to proceed against this plaintiff if it does not comply with said demand and direction, even to the extent of prosecuting its officers criminally, and to the ex-

tent of levying an execution against its realty and personality.

[fol. 10] 10

That this plaintiff alleges that,

(a) The series of notes in question, and none of them are, or were at any time, notes, bonds, debentures, certificates or stock or indebtedness, promissory notes, non-negotiable notes, or written obligations to pay money—within the State of South Carolina, nor

(b) Did they, or did they have a taxable situs within the State of South Carolina; and this plaintiff alleges for both of said reasons that the Tax Commission is not warranted by a proper construction of the Statutes involved to levy, assess, and attempt to collect a documentary stamp tax or the amount thereof, or to require the placing of stamps on said notes; and that, further, leaving statutory construction aside, that inasmuch as said notes are non-existent as notes, bonds, debentures, or such-like, within the State of South Carolina, and had no taxable situs within said State, that the defendants in the State of South Carolina have not the power to tax or to attempt to tax the aforesaid series of notes or any of them; and this plaintiff alleges that so to do constitutes the taking of property without due process of law, and constitutes a violation of the Fourteenth Amendment of the Federal Constitution, and renders the Statutes hereinbefore referred to under which the defendants are acting, and any other Statutes under which the defendants may be acting or attempting to act, repugnant to said Fourteenth Amendment of the Constitution of the United States of America.

11

This plaintiff further alleges that inasmuch as the papers [fol. 11] upon which said series of notes were written were mailed from the State of South Carolina to the State of New York, or to the State of Georgia, that to attempt to tax the same and to construe the Statutes in question as taxing the same, would be and would constitute a violation of the Commerce Clause of the Constitution of the United States and render said Statutes so proceeded under and herein set out to be repugnant to the Commerce Clause of

said Federal Constitution; and this plaintiff further alleges that to attempt to construe and enforce the Statutes in question as assessing an occupation tax renders the same repugnant to Section 1 of Article X of the Constitution of the State of South Carolina, which provides only for a graduated license on occupations and business, and that to construe and enforce said documentary tax as a property tax renders the same repugnant to the same Article of the same Constitution, for the reason, as to this first objection, that said tax is not a tax upon an occupation or business carried on within the State of South Carolina; and for the further reason as to the second objection, that said tax as a property tax is not uniform, the same being two to four cents per hundred dollars on notes, whereas a much lesser sum is charged and assessed in Aiken County, South Carolina, upon realty and personalty.

12

This plaintiff alleges that it is always entirely willing and desirous of paying its just and proper taxes, and that it pays a large amount of taxes to the State of South Carolina, and that it has always stamped its notes to South Carolina banks, and that this action is not brought for the [fol. 12] purpose of evading a proper tax, but this plaintiff alleges that for all of the reasons herein set up that it does not owe the State of South Carolina any documentary taxes, nor the duty to purchase documentary stamps and to affix the same on the pieces of paper which were examined by the field agent of the South Carolina Tax Commission and which now constitute concelled and worthless notes; and that said duty exists neither under the proper Statutory construction nor, laying Statutory construction aside, under the law of the land, said papers never having existed as notes or evidences of indebtedness within the State of South Carolina and never having had a taxable situs within said State.

This plaintiff further alleges that the defendants not only threaten to proceed to the collection of the aforesaid sum of five thousand twenty and 46/100 dollars which has been assessed as due it, by ordering the plaintiff to purchase documentary stamps and to place the same on the pieces of paper above referred to, but the defendants threaten to and express an intention as to all future dealings of the

plaintiff with its bankers beyond the State of South Carolina, to require the affixing of documentary stamps upon any papers delivered by this plaintiff to any bankers beyond the State of South Carolina, which may in the end become promissory notes. That this plaintiff is under the necessity from time to time to borrow money in the future from its bankers beyond the State of South Carolina, and that the question involved as to whether it must buy said documentary stamps and affix them upon the said papers will quite frequently from time to time arise in the future.

[fol. 13] 13

This plaintiff alleges that it is entitled to have the defendants, their agents, attorneys, and representatives enjoined from taking any steps whatsoever, looking to the collection of the sum of five thousand twenty and 46/100 dollars, which has been assessed against it as is hereinbefore set out, and from requiring and forcing this plaintiff to buy documentary stamps from the agent of the State of South Carolina for said amount, and to affix the same to the series of pieces of paper or cancelled notes hereinbefore referred to, and from proscuting and arresting its officers, and from issuing executions against its property, and from in the future attempting a like proceeding, for the reason that this plaintiff has no plain, adequate, or complete remedy at law nor in fact any remedy whatsoever against the wrong or wrongs which are threatened against it by the defendant, for the following reasons:

(a) That there is no plain, certain, and unequivocal method provided by the law by which said tax may be paid under protest and its amount recovered in case the Courts find that said amount was not due for said tax.

(b) That the plaintiff has been ordered to buy documentary stamps and to affix the same to the said pieces of paper referred to herein, and to cancel the same, and that when said stamps are cancelled their value is destroyed and there is no legal method to enforce from any person or officer or commission the restitution of their purchase price.

[fol. 14] (c) That the tax in question is by the Acts in question, made a lien upon the personalty and realty of

the plaintiff, and inasmuch as this plaintiff owns much valuable personalty and realty the said tax becomes a cloud thereupon.

(d) That under the terms of said Acts, failure to pay said alleged tax and failure to affix said documentary stamps is made a criminal offiense, for each of which failures the person signing said pieces of paper or alleged notes becomes liable to a separate criminal prosecution, which fact renders the officers of this corporation liable for as many as 114 criminal prosecutions in connection with the matters herein set up. That this plaintiff's business would be upset, interrupted, and disrupted by such proceedings, in that it would not be able to conduct its business and to retain the services of employees or officers in the face of such criminal prosecutions which said criminal prosecutions are threatened, if the orders of the defendants herein are not immediately complied with, nor to induce its officers in the future to execute similar papers in the face of liability to prosecution and arrest.

(e) That this plaintiff would be subjected to numerous and multifarious executions and suits at law for the collection of taxes, both past and prospective, the collection of which it alleges and avers is illegal, improper, and unconstitutional.

[fol. 15] 14

That this plaintiff further and specifically alleges that on Monday, the 16th day of June, 1930, the defendants, W. G. Query, J. P. Derham, and F. C. Robinson finally and specifically notified and informed this plaintiff that if it did not immediately purchase documentary stamp taxes of the State of South Carolina in the sum of five thousand twenty and 46/100 dollars, and place the same on said cancelled notes and cancel said stamps, that the said defendants would immediately issue execution in the aforesaid sum and place the same in the hands of the Sheriff of Aiken County and have the property, both real and personal, of the plaintiff, seized and sold for the purpose of the payment of said tax under said execution. That to so proceed would place a cloud upon the valuable realty and personalty of this plaintiff consisting of its cotton mills and plants, realty, machinery, and cotton, and cotton goods on hand in Aiken

County, and would interrupt and disrupt its business, and would subject it to immediate and irreparable injury, loss and damage, which would forthwith accrue to it and against it before notice could be given to the defendant and any hearing could be heard. That the said defendants further notified this plaintiff on said June 16, 1930, that they would be unwilling to delay the issuance of said execution until the matter could be heard and determined by a Court of Three Judges, as is provided by Section 266 of the Federal Judicial Code, but that if an injunction was not obtained forthwith and immediately that said execution would be issued and said proceeding above set out would be had immediately, and this plaintiff alleges that it would be entirely impracticable and impossible upon notice to the op-
[fol. 16] posite parties to have a hearing in time to prevent said threatened injury.

Wherefore, in consideration of the premises, and inasmuch as the plaintiff is without remedy at law, and inasmuch as its only protection must arise from the equity jurisdiction of this Court, plaintiff prays:

(1) That a writ of subpœna and respondendum issue out of and under the seal of this Court, and be directed to the defendants, W. G. Query, J. P. Derham, and F. C. Robinson, as members of South Carolina Tax Commission, and to them, requiring them to appear and to answer this bill, but not under oath, their answers under oath being expressly waived.

(2) That the Court construe the Acts herein set up, and that it be adjudicated.

(a) That the said Acts do not purport to place a documentary stamp tax upon the notes set out in this complaint or bill, and,

(b) In the alternative, if it be held that it does so apply, that it be adjudged that the aforesaid Acts in their application to and in the effort under them to place a documentary stamp tax upon the aforesaid notes, and in the effort to require said notes to be stamped, be declared to be void and unconstitutional and violative of plaintiff's rights and repugnant to the Fourteenth Amendment of the Constitution of the United States and to the Commerce Clause

thereof, and repugnant to the Constitution of the State of South Carolina, in the respects set up in this complaint, and,

[fol. 17] (c) That it be held that the laws in connection with said proposed documentary tax do not provide any plain, adequate, and complete remedy at law.

(3) That a temporary restraining order be granted enjoining the defendants from proceeding to enforce the collection of the proposed tax which has been assessed, either by warrant and arrest against this plaintiff or its officers, or by the issuance of execution against its property, or by any other legal means, and from the assessment of further taxes to be assessed against notes to be executed by this plaintiff in the future in favor of bankers residing, situated, and doing business beyond the limits of the State of South Carolina; that a Court constituted as is required by Section 266 of the Judicial Code of the United States be conveyed, and that said Court issue an interlocutory injunction so enjoining said defendants; and that on final hearing said Court make said injunction perpetual, forever enjoining the collection of the tax already assessed or any part thereof, and forever enjoining any attempt whatsoever on the part of the defendants to collect a similar tax arising out and acting under the existing Acts of the South Carolina Legislature. Let said restraining order and said injunctions run not only against the defendants, but also against their attorneys, assistants, subordinates, agents, and servants.

(4) That the plaintiff have and recover of the defendants the costs of this suit.

[fol. 18] (5) That the plaintiff have such further, other, and general relief as may be equitable.

This is the first application for an injunction in this cause.

Graniteville Manufacturing Company, By S. H. Swint, Treasurer. P. F. Henderson, Hendersons & Salley, Attorneys and Solicitors for Plaintiff.

[fol. 19] *Duly sworn to by S. H. Swint. Jurat omitted in printing.*

[fol. 20] AFFIDAVIT OF LANIER BRANSON

STATE OF SOUTH CAROLINA,
County of Aiken:

Personally appeared Lanier Branson, who, being duly sworn, says:

That he is the President of the Graniteville Manufacturing Company, having assumed the duties of that position about the 1st of December, 1924. He then succeeded Mr. Coles Phinizy in the active charge of the matters of the Graniteville Manufacturing Company, Mr. Coles Phinizy having after the death of his uncle, Mr. Jacob Phinizy, been active Vice-President of the Graniteville Manufacturing Company.

That the general course of dealing in connection with notes and the borrowing of monies from the various banks outside of the State of South Carolina since this deponent has been the President of the Graniteville Manufacturing Company, is correctly set out in the complaint.

Lanier Branson.

Sworn to before me this 17th day of June, 1930.
Belle Durden, Notary Public for South Carolina.
(L. S.)

[fol. 21] AFFIDAVIT OF P. F. HENDERSON

STATE OF SOUTH CAROLINA,
County of Aiken:

Personally appeared before me P. F. Henderson, who, being duly sworn, says:

That on Monday, the 16th day of June, 1930, he visited General J. Fraser Lyon, the Attorney of the South Carolina Tax Commission, and its members, who has its legal matters generally in charge, and who specifically is in charge of the matters set out in the bill of complaint herein, and discussed at length the question of the liability of the Graniteville Manufacturing Company for the documentary stamp tax in question. That as a result of said conference General Lyon courteously but firmly informed this deponent as the representative of Graniteville Manufacturing Company, that it was the purpose and intent of the Tax

Commission and its members immediately and forthwith to proceed to the collection of the tax claimed by the Tax Commission by such effective ueans as might be necessary, specifically mentioning the intention forthwith and immediately to issue execution to place the same in the hands of the Sheriff of Aiken County and proceed to the seizure of the property of the Graniteville Manufacturing Company and its sale for the collection of said tax. General Lyon stated that the Tax Commission would not be willing to waive the obtaining of a temporary injunction in the Federal Court pending the assembling of the Statutory Court before three Judges provided by section 266 of the Judicial Code; but stated that said temporary injunction must be procured and the Tax Commission and its members must be enjoined if it was intended to prevent their proceeding against the Graniteville Manufacturing Company immediately. He further reiterated the fact that the order of the [fol. 22] Tax Commission was that documentary stamps must be procured or fixed to the old notes and physically cancelled.

P. F. Henderson.

Sworn to before me this 17th day of June, 1930.
Belle Durden, Notary Public for South Carolina.
(L. S.)

[fol. 23] AFFIDAVIT OF COLES PHINIZY

STATE OF GEORGIA,
County of Richmond:

Personally appeared Coles Phini-y, who, being duly sworn says, that he was Vice-President and Treasurer of Graniteville Manufacturing Company until about November 1, 1924. That his Uncle, Mr. Jacob Phinizy, was President until his death on May 30th, 1924.

That deponent has examined the various notes listed by the South Carolina Tax Commission herein while he and Mr. Jacob Phinizy were officers of the Company; that during said period Mr. Jacob Phinizy was President of the Georgia Railroad Bank and transacted his business for the Graniteville Mfg. Co. in Augusta, Georgia, and not in Graniteville, S. C., having his desk in the Georgia Railroad Bank. That the following notes are dated and were exe-

cuted by Mr. Jacob Phinizy in Augusta, and were there delivered to the Banks on which they were drawn or were mailed from Augusta, Ga.:

Noted Produced, Dated at Augusta, Ga., Signed by Jacob Phinizy, President

April	25th, 1924.	Chemical National Bank	$140,000.00
Feb.	7th, 1924.	Citizens & Southern Bank	50,000.00
Feb.	7th, 1924.	Citizens & Southern Bank	50,000.00
Feb.	27th, 1924.	Citizens & Southern Bank	100,000.00
Nov.	14th, 1923.	Georgia Railroad Bank	50,000.00
Feb.	14th, 1924.	Georgia Railroad Bank	45,000.00
Sept.	21st, 1923.	National Exchange Bank	50,000.00

The following notes are dated and were executed by this deponent in Augusta, those to Georgia Railroad Bank being delivered to it in Augusta and those to Chemical National Bank being mailed from Augusta. That deponent lived in Augusta and did much of his work there:

[fol. 24] Notes Produced, Dated at and Executed in Augusta, Georgia, Signed by Coles Phinizy, Vice-President and Treasurer

Sept.	13th,1923.	Chemical National Bank	$225,000.00
Oct.	31st, 1923.	Georgia Railroad Bank	50,000.00
Nov.	13th, 1923.	Georgia Railroad Bank	196,154.98
May	14th, 1924.	Chemical National Bank	190,000.00

That notes—

Dated Oct. 7th, 1924, for $50,000.00 in favor of Citizens & Southern Bank, signed Graniteville Mfg. Co., by Coles Phinizy;

Dated Aug. 7th, 1924, for $70,000.00 in favor of Citizens & Southern Bank, signed Graniteville Mfg. Co. by Coles Phinizy;

Dated Sept. 12th, 1924, for $50,000.00 in favor of National Exchange Bank, signed Graniteville Mfg. Co., by Coles Phinizy,

are renewals, signed by deponent of former notes, and while they were signed and mailed from Graniteville, S. C., they did not become effective until the Banks in Augusta cancelled the old notes and accepted the renewals in lieu thereof.

As to the list of notes misplaced, deponent would say that the following were executed in the name of either Mr. Jacob Phinizy or himself, and that the practice followed was that all such notes were executed in Augusta and were delivered to the Augusta Banks or mailed from Augusta to the Banks out of the State. This was the course practically invariably followed by deponent and Mr. Jacob Phinizy, both of whom lived in Augusta, Ga. These notes are:

[fol. 25] List of Notes Not in File, Having Been Misplaced

July 24th, 1923.	Chemical National Bank	$175,000.00
Nov. 26th, 1923.	Chemical National Bank	175,000.00
June 7th, 1924.	Citizens & Southern Bank	50,000.00
June 9th, 1923.	Georgia Railroad Bank	55,000.00
Sept. 12th, 1923.	Georgia Railroad Bank	75,000.00
Sept. 22nd, 1923.	Georgia Railroad Bank	50,000.00
Nov. 19th, 1923.	Georgia Railroad Bank	20,000.00
Dec. 12th, 1923.	Georgia Railroad Bank	50,000.00
Aug. 18th, 1924.	State St. Trust Co.	200,000.00

Coles Phinizy.

Sworn to before me this 17 day of June, 1930. A. D. Tobin, Notary Public for Georgia. (L. S.)

[fol. 26] "Exhibit A" to Amended Bill of Complaint

Graniteville Manufacturing Co., Graniteville, S. C.

5-13-30.

List of Unstamped Notes

Notes Not in File, Having Been Misplaced

					Tax
July	24, 23.	Chemical Natl. Bank...	175,000.00	.....	.....
Nov.	26, 23.	" " " ...	175,000.00	.....	.....
June	7, 24.	Citizens Southern	50,000.00	.....	.....
June	9, 23.	Ga. R. R. Bank.....	50,000.00	.....	.....
Sept.	12, 23.	" " " "	75,000.00	.....	.....
Sept.	22, 23.	" " " "	50,000.00	.....	.....
Nov.	19, 23.	" " " "	20,000.00	.....	.....
Dec.	12, 23.	" " " "	50,000.00	.....	.....
Mar.	10, 25.	Natl. Exc. Bk. of Aug...	50,000.00	.....	.....
Aug.	18, 24.	State St. Trust Co.....	200,000.00	.....	.....
				895,000.00	179.00
Feb.	20, 26.	Citizens Southern.....	150,000.00	.....	.....
				150,000.00	60.00
June	8, 26.	" "	50,000.00	.....	.....
				50,000.00	10.00
					249.00

Notes in Evidence Not Stamped

Sept. 14, 23.	Chemic. 1 Natl. Bk....	225,000.00	.....	.....
April 25, 24.		140,000.00	.....	.....
May 14, 24.		190,000.00	.....	.....
Jan. 5, 25.		200,000.00	.....	.....
Feb. 7, 24.	Citizens Southern	50,000.00	.....	.....
Feb. 7, 24.		50,000.00	.....	.....
Feb. 27, 24.		100,000.00	.....	.....
Aug. 7, 24.		70,000.00	.....	.....
Oct. 7, 24.		50,000.00	.....	.....
Dec. 8, 24.		70,000.00	.....	.....
Feb. 3, 25.	State St. Trust	200,000.00	.....	.....
Nov. 10, 24.	State Bk. of N. Y.....	200,000.00	.....	.....
Oct. 31, 23.	Ga. R. R. Bank.....	50,000.00	.....	.....
Nov. 14, 23.		50,000.00	.....	.....
Feb. 14, 24.		45,000.00	.....	.....
Mar. 11, 25.		100,000.00	.....	.....
Sept. 21, 23.	Natl Exe. Bk of Aug...	50,000.00	.....	.....
Sept. 12, 24.		50,000.00	.....	.....
			1,890,000.00	378.00
June 23, 25.	Chemical Natl. Bk.....	200,000.00	.....	.....
Oct. 20, 25.		200,000.00	.....	.....
Dec. 12, 25.		200,000.00	.....	.....
July 6, 25.	Citizens Southern	100,000.00	.....	.....
Dec. 12, 25.		100,000.00	.....	.....
July 28, 25.	State St. Trust.....	100,000.00	.....	.....
Aug. 4, 25.		100,000.00	.....	.....
Jan. 19, 26.		200,000.00	.....	.....
May 18, 25.	State Bank of N. Y....	200,000.00	.....	.....
Oct. 6, 25.		50,000.00	.....	.....
Nov. 7, 25.		200,000.00	.....	.....
Sept. 2, 25.	Ga. R. R. Bank.....	100,000.00	.....	.....
Feb. 20, 26.		100,000.00	.....	.....
Sept. 3, 25.	Natl Exc. Bank of Aug...	50,000.00	.....	.....
Feb. 20, 26.		50,000.00	.....	.....
Nov. 13, 23.	X Ga. R. R. Bank.....	196,154.98	.....	.....
			2,146,154.98	858.48
June 7, 26.	Chemical Natl.	200,000.00	.....	.....
Nov. 30, 26.		200,000.00	.....	.....
Aug. 14, 26.	Citizens Southern	75,000.00	.....	.....
Mar. 12, 27.		100,000.00	.....	.....
Apr. 7, 27.		100,000.00	.....	.....
July 13, 26.	State St. Trust Co.	200,000.00	.....	.....
Feb. 8, 27.		150,000.00	.....	.....
May 4, 26.	State Bank of N. Y....	200,000.00	.....	.....
Oct. 26, 26.		200,000.00	.....	.....
May 26, 26.	Ga. R. R. Bank.....	75,000.00	.....	.....
Aug. 14, 26.		75,000.00	.....	.....
Feb. 8, 27.		50,000.00	.....	.....
Apr. 7, 27.		50,000.00	.....	.....
Feb. 8, 27.	Natl Exc. Bank of Aug...	50,000.00	.....	.....
Aug. 14, 26.	X Ga. R. R. Bank.....	75,000.00	.....	.....
			1,800,000.00	360.00
				1,845.48

Continued

[fol. 27]

Total amt ford			.....	6,931,154.98	1,845.48
July	5, 27.	State St. Trust Co.....	100,000.00	.....	.....
July	25, 27.		100,000.00	.....	.....
Jan.	23, 28.		200,000.00	.....	.....
July	17, 28.		200,000.00	.....	.....
Dec.	28, 28.		200,000.00	.....	.....
Sept.	28, 29.		150,000.00	.....	.....
May	23, 27.	State Bank of N. Y.....	200,000.00	.....	.....
July	19, 27.		50,000.00	.....	.....
Oct.	12, 27.		250,000.00	.....	.....
Apr.	2, 28.		150,000.00	.....	.....
Sept.	27, 28.		250,000.00	.....	.....
Mar.	13, 29.		250,000.00	.....	.....
Sept.	17, 29.		250,000.00	.....	.....
Dec.	17, 29.		250,000.00	.....	.....
Nov.	14, 27.	E. Naunberg	50,000.00	.....	.....
Jan.	3, 28.		50,000.00	.....	.....
Apr.	2, 28.		50,000.00	.....	.....
Feb.	27, 28.	Chase Natl Bank.....	250,000.00	.....	.....
Aug.	20, 28.		250,000.00	.....	.....
Feb.	17, 29.		250,000.00	.....	.....
Aug.	12, 29.		250,000.00	.....	.....
Nov.	14, 27.	Ga. R. R. Bank.....	100,000.00	.....	.....
Feb.	14, 28.		75,000.00	.....	.....
June	12, 28.		75,000.00	.....	.....
Nov.	19, 28.		100,000.00	.....	.....
Jan.	19, 29.		50,000.00	.....	.....
Mar.	30, 29.		100,000.00	.....	.....
May	23, 27.	Natl Exc. Bank of Aug...	50,000.00	.....	.....
Nov.	14, 27.		50,000.00	.....	.....
Apr.	2, 28.		50,000.00	.....	.....
Feb.	10, 30.		50,000.00	.....	.....
July	5, 27.	Chemical Natl Bank....	100,000.00	.....	.....
July	29, 27.		100,000.00	.....	.....
Jan.	3, 28.		200,000.00	.....	.....
May	7, 28.		250,000.00	.....	.....
Nov.	2, 28.		250,000.00	.....	.....
Apr.	29, 29.		250,000.00	.....	.....
Nov.	27, 29.		250,000.00	.....	.....
Sept.	3, 27.	Citizens Southern	100,000.00	.....	.....
Dec.	20, 27.		100,000.00	.....	.....
Feb.	14, 28.		75,000.00	.....	.....
June	12, 28.		75,000.00	.....	.....
Nov.	19, 28.		100,000.00	.....	.....
Mar.	18, 29.		100,000.00	.....	.....
June	3, 29.		150,000.00	.....	.....
June	29, 29.		50,000.00	.....	.....
July	1, 29.		100,000.00	.....	.....
Jan.	6, 30.		150,000.00	.....	.....
				6,850,000.00	2,740.00
				15,781,154.98	4,585.46

Amount of outstanding notes on which no stamps have been affixed.

Apr.	4, 30.	State Bank of N. Y.....	250,000.00	.....	.....
Feb.	10, 30.	Chase Natl Bank.....	250,000.00	.....	.....
Mar.	11, 30.	Geo. R. R. Bank.....	100,000.00	.....	.....
Apr.	12, 30.	Chemical Natl.	250,000.00	.....	.....
Mar.	12, 30.	Bk. of Manhattan Trust Co.	250,000.00	.....	.....
			1,100,000.00	1,100,000.00	440.00
					5,020.46

[fol. 28] IN UNITED STATES DISTRICT COURT

STATEMENT RE SUBPŒNA AND SERVICE

The foregoing complaint was accompanied by a proper subpœna, and due personal service of copies thereof were accepted by the defendants on the 20th day of June, 1930.

[fol. 29] IN UNITED STATES DISTRICT COURT

AMENDED ANSWER AND RETURN—Filed July 30, 1930

To the Honorable the District Court of the Eastern District of South Carolina:

The answer of the defendants and respondents to the Bill of Complaint and Return to the order of the Court, dated June 27, 1930, fixing July 17, 1930, for return and hearing upon the application for an interlocutory injunction.

Now comes the defendants and respondents, and say for answer *to* the Bill of Complaint and for cause why an interlocutory injunction should not issue:

1

The plaintiff and defendant having entered into an agreement and stipulation as to the facts in this case which are to supersede any facts stated in the complaint, no answer to the statement of facts contained in said complaint will be made; but that said agreed statement of facts is adopted as part of this answer.

[fol. 30] 2

Defendants deny the allegations contained in paragraph 10 (a); these defendants allege that the said Acts of the General Assembly of the State of South Carolina referred to in the Bill of Complaint, all provide as follows:

"That on or after the passage of this Act, there shall be levied, collected and paid, for and in respect of the several bonds, debentures, or certificates of stock and indebtedness, and other documents, instruments, matters and things mentioned and described in Schedule *A* of this Act, or for or in respect of the vellum, parchment, or paper upon which such instrument, matter or things, or any of them are written or printed, by any person who makes, signs, issues, sells, removes, consigns or ships the same or for whose benefit or use the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule."

Schedule A, section 4 of said Act provides as follows:

"Notes, Written Obligations to Pay Money.—Promissory notes, except bank notes issued for circulation and executory contracts for the payment of money which are executed or carried out in an instrument of writing to which documentary stamps are affixed; non-negotiable notes; written obligations to pay money, except as may herein otherwise be provided for; assignment of salaries, wages or other compensations; and for each renewal of same, for a sum not exceeding One Hundred ($100.00) Dollars, four (4) cents; and for each additional One Hundred ($100.00) Dollars, or fractional part thereof, four (4) cents.

"Mortgages which incorporate the certificate of indebtedness not otherwise shown in separate instruments are subject to a tax at the same rate."

Under and by vitrue of the above enactments, defendants allege that the plaintiff is liable for the payment of an excise tax upon signing said notes and for and in respect of the vellum, parchment, or paper upon which such notes are written and printed;

3

Defendants deny paragraph 10 (b) and allege that the State of South Carolina has power to lay an excise tax upon the signing of any of the papers mentioned in said [fol. 31] Act No. 574, for and in respect to the vellum, parchment, or paper upon which such instrument is written or printed, or by any person who signs the same, no matter whether the vellum, parchment, or paper upon which such instrument is written be within the State of South Carolina or not so long as it is signed, either within or without the State by a corporation chartered under the laws of the State of South Carolina; that as to certain of the notes having been executed in the City of Augusta, State of Georgia, these defendants allege that in contemplation of law and legal effect they were signed in Graniteville, South Carolina, for that plaintiff was not authorized to do business, or carry on any of its activities under the laws of the State of Georgia, and such notes as were signed in the City of Augusta, Georgia, were for the personal convenience of the individual officers of said plaintiff who happened to have their residence in the City of Augusta, Georgia; defendants allege that the State of South Carolina has the right to lay a tax upon the signing of any of the notes and papers mentioned and described in the Bill of Complaint and that it has the right to levy a tax upon the vellum, parchment, or paper upon which the same is written and printed, regardless of whether such written instrument had at the instant signing of same the legal effect of a note, bond, or other obligation, to pay money.

4

Defendants deny each and every allegation contained in paragraph Eleven; defendants further say that the notes and papers described in the Bill of Complaint and stipulation are not the subjects of interstate commerce and that the Commerce Clause of the Constitution of the United States has no application thereto; defendants allege that neither the alleged notes nor the money borrowed thereon were ever the subjects of interstate commerce.

[fol. 32] As to the Section I, Article X of the Constitution of South Carolina, defendants say that said provision of the State Constitution in nowise limits or restricts the

Legislature from adopting the tax involved in this litigation; that the Legislature of South Carolina is empowered to levy any and all kind of taxes, except where specifically restricted and limited either by the Constitution of South Carolina or the Federal Constitution, and there is no provision in either of said Constitutions whereby the legislature is denied the power to levy the tax in question.

5

Defendants deny the allegations contained in paragraph Twelve, except as the same may be admitted in the Stipulation of Facts hereto attached.

6

Defendants deny the allegations contained in paragraph Thirteen, except as the same may be shown to the contrary in the written Stipulation of Facts hereto attached.

Further answering paragraph Thirteen, defendants allege that there is a plain, adequate, and complete remedy at law by which plaintiff may safely and fully protect any rights which he may have in the premises, in that it is provided by Section 29 of the Act involved in this litigation, as follows:

"That the collection of the license taxes imposed under the provisions of this Act shall not be stayed or prevented by any injunction, writ or order issued by any Court or Judge thereon. In all cases in which any license or tax is required to be paid hereunder by any person, firm or corporation and the Tax Commission shall claim the payment of the taxes so assessed, or shall take any step or proceedings to collect the same, the person, firm or corporation against whom such license taxes are charged, or against whom such [fol. 33] step or proceedings shall be taken, shall, if he conceives the same to be unjust or illegal for any reason, pay the said taxes notwithstanding, under protest, in such funds and monies as the South Carolina Tax Commission shall be authorized to receive, and upon such payment being made said South Carolina Tax Commission shall make proper note that the same was paid under protest and notify the State Treasurer that such taxes were paid under protest; that the person, firm or corporation so paying said license taxes may at any time within thirty days

after making such payment, but not afterwards, bring an action against the said South Carolina Tax Commission for the recovery thereof in any Court of competent jurisdiction and/or in proper cases in the Federal Courts and if it be determined in said action that such taxes were wrongfully and illegally collected for any reason owing to the merits, then the Court before which the case is tried shall certify of record that the same were wrongfully collected and ordered to be returned with interest thereon at the rate of four (4%) per centum per annum. Whereupon the Tax Commission shall issue its warrant upon the State Treasurer for refunding the taxes and interest so paid, which shall be paid in preference to other claims against the treasury."

Wherefore, having thus made a full answer to all the matters and things contained in the Bill of Complaint and having herein fully made return to the order to show cause why an interlocutory injunction should not be granted, defendants pray that an interlocutory injunction be denied and that the Bill of Complaint be dismissed, and for judgment for its costs in this behalf incurred.

John M. Daniel, Attorney General; Cordie Page, Assistant Atty. Gen.; J. Fraser Lyon, Solicitors for Defendants-Respondents.

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED AGREED STATEMENT OF FACTS—Filed July 9, 1930

It is stipulated and agreed between Graniteville Manufacturing Company, plaintiff and petitioner herein, acting by and through its counsel, and the defendants, W. G. Query, J. P. Derham, and F. C. Robinson personally and as members of the South Carolina Tax Commission, defendants and respondents herein, acting by and through their counsel, that the following facts are admitted and agreed to as being the facts underlying and surrounding this cause. The following are the agreed facts:

1. That Graniteville Manufacturing Company (hereinafter referred to as the plaintiff) is a corporation duly chartered under the laws of the State of South Carolina, having its principal place of business in the Town or Settlement of Graniteville, South Carolina.

II. That this is a suit of a civil nature in equity (defendants reserving, however, the point that the plaintiff has an adequate remedy at law), in which the matter in [fol. 35] controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars; that said suit arises under the Constitution of the United States, and that the Courts of the United States have jurisdiction under the provisions of Section 24 of the Judicial Code of the United States.

III. That South Carolina Tax Commission is an administrative board or commission, and is so constituted by the Statute Laws of the State of South Carolina. That said commission is at present composed of W. G. Query, J. P. Derham, and F. C. Robinson as Commissioners, who are the defendants herein personally and as members of said commission; and that said commission maintains its offices and transacts its business (except as is herein noted) at Columbia, South Carolina, at the seat of Government within the Eastern District of South Carolina.

That the said defendants employ various agents, inspectors, attorneys, and field agents to visit the various counties in the State to make inspections; and that one of said agents has recently visited the offices of the plaintiff at Graniteville, South Carolina, which is situated in Aiken County within the Eastern District of South Carolina, and has done and performed certain acts hereinafter referred to at said place as the agent of the defendant.

IV. That for a number of years last passed and specifically including a period running from July 24, 1923, to March 12, 1930, in financing the operations of the plaintiff it has been the custom of the said plaintiff to borrow various large sums of money from banks, some of which are situate within the State of South Carolina, and some of which are situate without the State of South Carolina. [fol. 36] That while its executive officers were Messrs. Jacob Phinizy and Coles Phinizy, both of whom resided in

Augusta, Georgia, all notes were executed in Augusta, Georgia, and were there delivered to the banks in question, or were mailed from Augusta, Georgia, to said banks where situated. That the details of said general course of action during said period are fully outlined and set out in the affidavit of Mr. Coles Phinizy, which is attached to the original complaint herein, which is to be taken as true and correct, and to which reference is had.

That this was the course of action prior to December 1, 1924, at which time the active management of the plaintiff was assumed by Mr. Lanier Branson, who, from said time to the present time, has been and now is the President of the plaintiff.

That since said date (December 1, 1924) the course of action of the plaintiff has been that in each instance a paper of the form hereinafter set out was executed by the president or by some executive officer of the plaintiff at Graniteville, South Carolina. That said papers made in favor of banks existing at and located at points beyond the limits of the State of South Carolina, during the period referred to, were made to Chemical National Bank, State National Bank of New York, E. Naunberg, Chase National Bank, and Bank of Manhattan Trust Company, of New York City; to Citizens & Southern Bank (now The Citizens & Southern National Bank), Georgia Railroad Bank, and National Exchange Bank of Augusta, Georgia, all of Augusta, Georgia; and to State Street Deposit Company of Boston, Massachusetts, none of which banks are located or do business within the State of South Carolina.

[fol. 37] That the further custom and practice in the course of dealing between this plaintiff and each of said banks was that, in each instance, at the office of the banks, a line of credit was first established between the banks and the plaintiff—that is to say, an agreement was made that the plaintiff's borrowing from said banks should never exceed a certain amount, each specific loan to be made thereafter being subject to acceptance by the specific bank from whom it was sought, That thereafter, when a loan was desired said bank having been notified that a loan would be desired by a certain date, and an inquiry having been made of it as to the then existing discount rate, that a paper of the purport hereinafter set out would be signed

by the President or other Executive Officer of the plaintiff at the offices of the plaintiff in Graniteville, Aiken County, South Carolina, and said paper would be forwarded to the bank in question, either in New York or in Augusta, or in Boston, by United States mail. That said paper was subject to withdrawal and revocation by the plaintiff until it was actually received by the bank in question in the City of New York or in the City of Augusta, Georgia, or in the City of Boston, Massachusetts, and until said paper was, after its receipt in New York or Augusta or in Boston, accepted by said bank, and the proceeds thereof were actually placed to the credit of this plaintiff in said bank.

V. That each of said notes were executed on a blank form, which form reads as follows:

"Graniteville Manufacturing Company, Graniteville, South Carolina

"No. —. —— —, 192-.

"On —— —, ——, for value received, we promise to pay [fol. 38] $— thousand dollars, to the order of —— ——, at their banking house in —— ——.

"Graniteville Manufacturing Company."

That in each instance the date and amount involved and the name of the bank was filled in, and in each instance the blank provided for the place where the note was to be paid was filled in to read either in New York or in Boston, Massachusetts, or in Augusta, Georgia, as the case might be; and in each instance the note in question was actually paid to the bank in question upon its maturity either in the City of New York or in Boston, Massachusetts, or in the City of Augusta, Georgia. That said payments were made by sending to the bank in question checks upon other banks, which other banks were generally in New York, Boston, or Augusta; that said checks were generally sent from the office of the plaintiff in Graniteville, South Carolina.

VI. When each of said notes was paid, that in each instance it was marked paid or cancelled, and in many instances was actually perforated to show its payment, retirement, and cancellation, and was returned to the plaintiff at its offce in Graniteville, South Carolina.

VII. That throughout the years this plaintiff, acting as it believed within its legal rights and with absolute good faith and not with any purpose of evading any just tax, has not placed any South Carolina Documentary Stamps upon notes that were negotiated with and placed with the banks situated in New York, Boston, or Augusta. This plaintiff has from time to time borrowed funds and placed loans with banks located within the State of South Carolina, and has always fully stamped said notes with the [fol. 39] South Carolina Documentary stamps as required by law.

VIII. That the State of South Carolina has from time to time passed various acts requiring the affixing of documentary stamps as a tax measure, upon various documents. These Acts are as follows, and reference is made to the specific terms of each of said Acts, to-wit:

Act No. 11, page 12, Acts of 1923,
Act No. 197, page 299, Acts of 1925,
Act No. 475, page 897, Acts of 1926,
Act No. 73, page 122, Acts of 1927, and
Act No. 574, page 1089, Acts of 1928.

IX. That as a result of the inspection made by its field agent at Graniteville, South Carolina, on the 14th day of May, 1930, the defendants have assessed a documentary stamp tax of five thousand twenty and 46/100 dollars upon the notes given by the plaintiff to the bankers doing business in New York, Augusta, and Boston, hereinbefore mentioned, and have delivered to the plaintiff a schedule of said notes and an assessment of said tax which comprises Exhibit "A" of the complaint, to which reference may be had. That said action took place at Graniteville, South Carolina, on the date referred to.

That as a final action on their part, on the 16th day of June, 1930, the defendants notified the plaintiff that if it did not proceed to purchase documentary stamps in the amount of five thousand and twenty and 46/100 dollars and immediately place the same upon the notes in question, that the defendants would proceed to issue execution and to place the same in the hands of the Sheriff of Aiken County, and to have the same levied upon the plaintiff's property, [fol. 40] and to have the same sold in sufficient quantity to realize the amount of the tax and costs involved.

That the plaintiff owns a large cotton factory and much real estate and much personalty situated in Aiken County.

We consent:

Graniteville Manufacturing Company, by P. F. Henderson, Hendersons & Salley, its attorneys. W. G. Query, J. P. Derham, and F. C. Robinson, personally and as members of the South Carolina Tax Commission, by J. Fraser Lyon, General Counsel.

[fol. 41] IN UNITED STATES DISTRICT COURT

STATEMENT RE TEMPORARY RESTRAINING ORDER AND APPLICATION FOR INJUNCTION

Hon. Ernest F. Cochran, District Judge of the Eastern District of South Carolina, granted a temporary restraining order and an order calling to his assistance Hon. John J. Parker and Hon. Elliott Northcott, Circuit Judges of the Fourth Circuit, and after the giving of the required notice both to the Governor and to the Attorney General of South Carolina, this cause was heard upon an application for an interlocutory injunction before said Court so constituted, on July 17, 1930.

[fol. 42] IN UNITED STATES DISTRICT COURT

GRANITEVILLE MANUFACTURING COMPANY, Plaintiff

vs.

W. G. QUERY, J. P. DERHAM, and F. C. ROBINSON, as Members of South Carolina Tax Commission, Defendants

OPINION—Filed October 17, 1930

ERNEST F. COCHRAN, District Judge:

The plaintiff brought suit against the defendants as members of the South Carolina Tax Commission to enjoin them from enforcing the collection of certain documentary stamp taxes. The matter comes up upon an application

for an interlocutory injunction, made before three judges under the provisions of Section 266 of the Judicial Code, as amended (Title 28, Section 380, U. S. Code).

The parties have entered into a written stipulation as to the facts of the case, which has been filed as a part of the record in the cause. The new equity rule 70½ recently promulgated by the Supreme Court requires the courts of first instance, in deciding suits in equity, to find the facts and state the conclusions of law thereon, separately. Where all of the facts have been stipulated by the parties and made a part of the record, it would seem unnecessary to recite the facts in any opinion or decree made by the court, or make any special finding thereon. However, to avoid [fol. 43] any uncertainty, we find all the facts as set forth in the stipulation, but do not deem it necessary to restate them in detail in this opinion, but will make only such brief statement as may be necessary for a proper understanding of the grounds of our decision.

The facts are substantially as follows:

The plaintiff is a South Carolina corporation, with its principal place of business at Graniteville, S. C., and is engaged in manufacturing in that State. An agent for the South Carolina Tax Commission recently made an examination at the offices of the plaintiff at Graniteville, and found there a number of notes, which plaintiff had executed to various banks outside of the State of South Carolina, and which had been paid. They were not stamped. The Tax Commission, pursuant to the laws of South Carolina, assessed a documentary stamp tax of $5,020.46 upon these notes, and notified the plaintiff that if it did not proceed to purchase documentary stamps in that amount and place the same upon the notes, they would proceed to issue execution and have the same levied upon plaintiff's property under the provisions of the South Carolina law. These notes were executed at various times from July 24, 1923, to March 12, 1930. The notes were all payable to banks, at their banking houses, respectively, outside of South Carolina, none of them being located or doing any business within that State. The custom and practice between the plaintiff and each of the banks was that in each instance, at the office of the bank, a line of credit was first established; that is, an agreement was made that the plaintiff's borrowing from the bank should never exceed a certain

amount, each specific loan to be made thereafter being subject to acceptance by the bank. When a loan was desired, the bank having been notified that a loan would be desired [fol. 44] at a certain date and an inquiry having been made of it as to the then existing discount rate, the note would be signed by the president or other executive officer of the plaintiff, and forwarded to the bank by mail. The note was subject to withdrawal and revocation by the plaintiff until it was actually received and accepted by the bank and the proceeds actually placed to the credit of the plaintiff in the bank. Each note was executed on a blank form, which reads as follows:

"Graniteville Manufacturing Company, Graniteville, South Carolina

"No. —. —— —, ——, 192-.

"On —— —, ——, for value received, we promise to pay $—thousand dollars, to the order of —— —— at their banking house in ——.

"Graniteville Manufacturing Company."

The date and amount involved and the name of the bank were filled in and the note made payable to the bank at its banking house (which was outside of South Carolina). Payment of the note was made to the bank at its banking house by the plaintiff sending checks from its office at Graniteville upon other banks; and when the note was paid, it was marked paid, or canceled, and returned to the plaintiff at Graniteville, S. C., and there kept. The plaintiff did not place any documentary stamps upon any of its notes that were negotiated and placed with banks outside of South Carolina; acting, as it believed, within its legal rights and [fol. 45] with absolutely good faith, and not with any purpose of evading any just tax. The plaintiff from time to time borrowed funds and placed loans with banks located within the State of South Carolina, and always fully stamped said notes with South Carolina documentary stamps, as required by law.

The foregoing facts apply to all of the notes; but with reference to the place where the notes were signed, they may be divided into two classes. Prior to December 1, 1924, the plaintiff's executive officers resided in Augusta, Ga.,

and all of its notes, up to that time, were signed by its executive officers in Augusta, Ga., and mailed from there to banks outside of South Carolina, and those notes were never in the State of South Carolina until after they were paid and returned to the plaintiff at its office at Graniteville, S. C. But after December 1, 1924, plaintiff's executive officers resided at Graniteville, S. C., and the notes executed subsequent to that time were signed by those officers at Graniteville, S. C., placed in the mail there for delivery to the bank outside of South Carolina, and upon payment, were later returned to the plaintiff at Graniteville, S. C. The plaintiff owns a large cotton factory and real estate and much personalty in Aiken County, S. C., which would be subject to levy and sale under the laws of South Carolina.

The first question is whether or not the plaintiff has an adequate remedy at law. Unless there is an adequate remedy at law, an injunction is a proper remedy. But the remedy at law must be plain, full and complete, and where the remedy at law is doubtful, the taxpayer is not compelled to speculate as to what the decision of the court of law will be, whether State or Federal, but is entitled to an injunction.

[fol. 46] Davis v. Wakelee, 156 U. S. 680.
Union Pacific R. Co. v. Weld Co., 247 U. S. 282.
Dawson v. Kentucky Distilleries, 255 U. S. 296.

See also Southern Ry. Co. v. Query, 21 Fed. (2d) 333, 337, where a number of other Supreme Court decisions supporting the same propositions are cited.

The authority for the imposition of stamp taxes, during the time the plaintiff's notes were executed, is found in various acts of the Legislature of South Carolina, beginning in 1923; the last Act being Act No. 574 of the Acts of the General Assembly of South Carolina of 1928 (pp. 1089-1142) approved March 10, 1928. All of them contain the following provisions:

"There shall be levied, collected and paid, for and "in "respect of the several bonds, debentures or certificates of "stock and indebtedness, and other documents, instru-"ments, matters and things mentioned and described in "Schedule A of this Act, or for or in respect of the vellum, "parchment, or paper upon which such instrument, matter

"or things, or any of them, are written or printed, by any "person who makes, signs, issues, sells, removes, consigns "or ships the same or for whose benefit or use the same "are made, signed, issued, sold, removed, consigned, or "shipped, the several taxes specified in such schedule."

* * * * * * *

"Schedule A

* * * * * * *

"Promissory notes, except bank notes issued for circu-
[fol. 47] "lation * * * and for each renewal of the "same."

It was conceded by the counsel for the defendants that there is no remedy at law by which these taxed can be recovered after payment, unless it is contained in Section 29 of the Act of 1928. That section is as follows:

"§ 29. Parts of Act Independent—Taxes to be Paid "under Protest—Sure for Recovery.—That if any clause, "sentence, paragraph or part of this Act shall, for any "reason, be adjudged by any court of competent jurisdic- "tion to be invalid, such judgment shall not affect, impair "or invalidate the remainder of this Act, but shall be con- "fined in its operation to the clause, sentence, paragraph "or part thereof directly involved in the controversy in "which such judgment shall have been rendered. No cap- "tion of any Section or set of Sections shall in any way "affect the interpretation of this Act or any part thereof: "*Provided,* That the collection of the *license taxes* imposed "under the provisions of this Act shall not be stayed or "prevented by any injunction, writ or order issued by any "Court or Judge therein. In all cases in which any *license* "*or tax* is required to be paid hereunder by any person, "firm or corporation and the Tax Commission shall claim "the payment of the taxes so assessed, or shall take any "step or proceedings to collect the same, the person, firm "or corporation *against whom such license taxes are* "*charged,* or against whom such step or proceedings shall "be taken, shall, if he conceives the same to be unjust or "illegal for any reason, pay the *said taxes* notwithstand- "ing, under protest, in such funds and monies as the South

"Carolina Tax Commission shall be authorized to receive, [fol. 48] "and upon such payment being made said South "Carolina Tax Commission shall make proper note that the "same was paid under protest and notify the State Treas- "urer that *such taxes* were paid under protest; that the per- "son, firm or corporation *so paying said license taxes may "at any time within thirty (30) days after making "such payment,* but not afterwards, bring an action against "the said South Carolina Tax Commission for the recovery "thereof in any Court of competent jurisdiction and/or in "proper cases in the Federal Courts and if it be determined "in said action that such taxes were wrongfully and ille- "gally collected for any reason owing to the merits, then "the Court before which the case is tried shall certify of "record that the same were wrongfully collected and or- "dered to be returned with interest thereon at the rate of "four (4%) per centum per annum. Whereupon the Tax "Commission shall issue its warrant upon the State Treas- "urer for refunding the taxes and interest so paid, which "shall be paid in preference to other claims against the "treasury."

From the portions of this section which we have italicised, it appears clear that the remedy provided is only for the recovery of license taxes. It is true that in one place the language used is "license or tax"; but when the whole section is read, it will be seen that only license taxes may be paid under protest and recovered, and the expression "license or tax" is either an inadvertence or else the words "license or tax" were used as synonymous. In any event, those words must be construed in harmony with the remaining portions of the section, which speak only of "license taxes."

The tax in question, by the terms of the Act, is not a license tax, but a documentary tax. It is unnecessary to [fol. 49] enter into any complete analysis or discussion of the Act; but a careful reading of it discloses that the first class of taxes levied are documentary taxes, expressly so declared by the terms of the Act, levied directly on the documents themselves; and a number of other taxes which are levied are expressly denominated "license taxes" for the privilege of carrying on certain lines of business. The

first part of the Act deals solely with taxes on documents. The remaining part of the Act deals with taxes on certain lines of business and sales and all of the taxes imposed thereon are expressly declared by the Act itself to be license taxes. The Act clearly contemplates two classes of taxes: one class which it denominates documentary taxes, and another class which it denominates license taxes. It is perfectly apparent that the provision in Section 29 to permit the taxpayer to pay under protest and recover, refers only to the license taxes mentioned in the Act, and not to the documentary taxes. The plaintiff therefore has no adequate remedy at law to recover any of these stamp taxes on documents.

This brings us to the merits of the case. The plaintiff claims that the notes in question had no taxable situs in South Carolina, and any Act of that State imposing a tax thereon would be in contravention of the Fourteenth Amendment to the Constitution of the United States. We shall discuss, first, but very briefly, those notes which were executed in Augusta, Ga., and mailed there to banks outside of South Carolina, and which were never in the State of South Carolina until after they were paid and returned to the plaintiff at Graniteville, S. C. As to those notes, we are clearly of opinion that they were beyond the taxing power of the State. The whole transaction from its inception by the signing of the note in Georgia to its consummation by payment in a State other than South Carolina, was [fol. 50] entirely beyond the borders of South Carolina and consequently beyond the power of that State to tax. It is perhaps superfluous to cite decisions to sustain the proposition that a State cannot tax property which has no legal situs within the State. The late cases upon this subject all recognize and affirm this proposition. See Blodgett v. Silbermann, 277 U. S. 1. Safety Deposit & Trust Co. of Baltimore v. Virginia, 280 U. S. 83. Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204. Baldwin v. Missouri, 281 U. S. 587.

As to the stamp taxes demanded on those notes which were executed in Augusta, Ga., and mailed there to banks outside of South Carolina, the interlocutory injunction must be granted.

But as to those notes which were signed and mailed at Graniteville, S. C., different considerations must prevail;

and it is necessary to examine and discuss more fully the plaintiff's contention in that respect. The theory of the plaintiff is that under the four cases recently decided by the Supreme Court, which are cited above, the doctrine announced in Blackstone v. Miller, 188 U. S. 189, and kindred cases, has been swept away, and that the established doctrine now is that intangibles can have but one taxable situs, and that that situs can be only in the State of the domicile of its owner, even though the instrument itself may be physically in some other State. The plaintiff contends that the maxim of mobilia sequuntur personam must be applied to ascertain the taxable situs in all cases of intangibles; and that when the taxable situs is ascertained by the application of that maxim, namely, the residence of the owner, the intangibles may not be taxed anywhere else by any form of taxation. We do not deem it necessary to attempt to review the various cases decided by the Supreme Court [fol. 51] prior to the four cases mentioned. That has been done by the Supreme Court in those cases. We are not persuaded that the Supreme Court has established the doctrine as broadly as claimed by the plaintiff. A careful examination of the four cases relied upon by the plaintiff convinces us that they are not decisive of the question in the present case; nor do we think either the reasoning or the conclusion reached in those cases demands a decision in the present case in favor of the plaintiff.

The first of these cases in point of time is the Connecticut case, Blodgett v. Silbermann, supra. In that case it was held that the State of Connecticut might levy an inheritance tax, it being the State of the domicile of the decedent, upon the value of an interest in a partnership exisiting solely in New York State, and upon the value of bonds and certificates of the United States, which were physically kept on deposit in New York.

In the Virginia case, Safety Deposit & Trust Co. v. Virginia, supra, one Kellam, then domiciled and residing in Virginia, transferred and delivered to the Safety Deposit & Trust Co., for the benefit of his minor sons, stocks and bonds, with power to change the investments. He absolutely parted with title to the property. His sons were domiciled in Virginia, and the State of Virginia, after Kellam's death, levied a property tax on the bonds. The stocks and bonds were kept by the Safety Deposit & Trust Co., in

Maryland. The Supreme Court held that the absolute title to the bonds was in the Safety Deposit & Trust Co., which had its domicile in Maryland; that the stocks and bonds had acquired a situs separate from that of the beneficiary owners applied the maxim of mobilia sequuntur personam and [fol. 52] held that Virginia could not levy the tax.

In the Minnesota case, one Taylor, domiciled and residing in New York, died there. He owned and kept within the State of New York negotiable bonds and certificates of indebtedness issued by the State of Minnesota and cities of Minneapolis and St. Paul. Minnesota claimed an inheritance tax upon the theory of Blackstone v. Miller; that the debtor, or maker of the bonds and certificates, was within her jurisdiction; that they were debts of Minnesota and her corporations, subject to her control; and that her laws protected them and gave them validity and provided means for enforcing payment. The Supreme Court however definitely overruled Blackstone v. Miller, and held that the facts were not sufficient to create a taxable situs in Minnesota.

In the Missouri case, Baldwin v. Missouri, supra, Mrs. Baldwin resided in Illinois, and had never been in Missouri. By her will, she left all her property to her son, a resident of the same place, and appointed him sole executor. The will was duly probated at her residence and under the statute of Illinois, an inheritance tax was there laid upon the value of all her intangible personalty, wherever situated. Ancilliary letters of administration were issued in Missouri, and a report to the court in that State showed that at the time of her death, Mrs. Baldwin owned credits for cash deposits with banks located in Missouri, certain United States coupon bonds, and sundry promissory notes which were then physically within Missouri. Most of these notes were executed by citizens of Missouri, and the larger part were secured by liens upon lands lying therein. Missouri sought to impose an inheritance tax on these bank deposits, bonds, and notes. The court held that the bank deposits, bonds, and notes were mere choses in action, and even though they [fol. 53] were physically within the State of Missouri, they had their situs at the domicile of the creditor, and were not within Missouri for taxation purposes; that they passed from the dead to the living in Illinois, where they were actually taxed, and that the transfer was not in Missouri and not subject to her power.

The broad claim of the plaintiff is that under these decisions, the situs of choses in action is the domicile of the owner, and that they can have no other legal situs whatsoever for taxable purposes, under any circumstances. We think it is clear that these decisions do not go that far. They do not hold that the maxim mobilia sequuntur personam (which after all is a mere fiction of law) must be universally applied in all situations. In the present case, we have a corporation chartered by the laws of South Carolina, with an established office in that State, doing business there, signing and issuing in that State notes in the conduct of its business, and mailing them in that State; and in our opinion, to apply the maxim in such a case, and hold that such transactions were wholly beyond the borders of the State and therefore beyond her taxing power, would be to make the fiction of the maxim override the actual facts of the case. The tax in this case is not a property tax upon intangibles, the title to which is held elsewhere, as in the Virginia case. Nor is it a tax upon a transfer of intangibles when the transfer occurred wholly without the State, as in the Minnesota and Missouri cases. Nor is it a tax sought to be imposed because of the physical presence of intangibles owned in another State, as was likewise the situation in the Missouri case. But the tax in the present case is a tax upon the creation within the State of South Carolina of evidence of a debt. These notes were created, if not [fol. 54] wholly, certainly partly, within the State of South Carolina. The object taxed, therefore, namely, the creation of the evidence, was within the State, and subject to the power of the State. The tax is laid upon the documents themselves, and required to be paid by the person who makes, signs or issues them. The documents were within the State, made, signed and issued there. None of these facts appears in any of the cases relied upon by the plaintiff. They give a legal, taxable situs in South Carolina.

The plaintiff further argues, however, that inasmuch as it had the right of revocation until the note was received and accepted by the bank, and inasmuch as the bank had the right to decline to accept the note, the contract was not completed until after the note had passed beyond the power of South Carolina. He cites numerous cases upon the question that the law of the place where the contract is finally accepted or delivered, governs. But we do not think the

question presented here is controlled by decisions relative to the law governing the contract. The question before us is whether the acts in question were so wholly beyond the State of South Carolina as to be beyond her power to tax. The statute of South Carolina is broad enough to cover the case of notes actually signed and placed in the mail for delivery, even though there is a right of revocation by the plaintiff, or rejection by the bank. In view of the broad language of the statute, in the absence of a decision by the State court, we are not disposed to construe the statute as not applying to such a case. The real question before us is whether, when the statute has been applied to such a case, as has been done here by the Tax Commission, it violates the Fourteenth Amendment. We do not think so. It was competent for South Carolina to lay a tax upon these [fol. 55] acts occurring within her borders, even though the contract might not be fully consummated by the acceptance of the bank, or might be defeated by the revocation of the plaintiff.

The plaintiff contends also that the laying of the tax in question is a burden upon interstate commerce. But under the decisions of the Supreme Court it is plain that the notes in question did not constitute interstate commerce. They are mere personal contracts. The making of such a contract is a mere incident of commercial intercourse, and sending the notes by mail or otherwise from one State to another does not constitute interstate commerce. See New York Life Ins. Co. v. Deer Lodge County, 231 U. S. 495, where the subject is fully discussed and the decisions reviewed.

For these reasons, we think that so far as concerns those notes which were signed and mailed in South Carolina, the interlocutory injunction must be refused.

An appropriate order in accordance with the views herein expressed will be duly entered.

We concur in the foregoing opinion.

John J. Parker, United States Circuit Judge for the Fourth Circuit. Elliott Northcott, United States Circuit Judge for the Fourth Circuit. Ernest F. Cochran, United States District Judge for the Eastern District of South Carolina.

[fol. 56] IN UNITED STATES DISTRICT COURT

GRANITEVILLE MANUFACTURING COMPANY, Plaintiff,

vs.

W. G. QUERY, J. P. DERHAM, and F. C. ROBERTSON as members of South Carolina Tax Commission, Defendants

ORDER GRANTING PRELIMINARY INJUNCTION IN PART AND REFUSING SAME IN PART—Filed October 17, 1930

The plaintiff having made application for an interlocutory injunction and the parties having entered into a written stipulation of the facts and the said application having been duly heard before three judges as required by law, and the court having found the facts as contained in the said written stipulation,

Now, upon the said facts and for the reasons set forth in an opinion of the court filed this day, it is

Ordered:

1. That as to the stamp taxes demanded upon those notes set forth and described in the bill of complaint which were signed by plaintiff's officers at Augusta, Ga., and mailed from there to banks outside of South Carolina, the restraining order heretofore granted in this case, dated June 24, 1930, be and the same is hereby continued in force, and the defendants and each of them and all persons whomsoever acting by, through, or for them, be and they are hereby restrained and enjoined, pending the final hearing and determination of the cause upon the merits, and until the final [fol. 57] order of this court, from doing any acts whatsoever towards assessing against or collecting from the plaintiff, any stamp tax on said notes and from proceeding criminally against the plaintiff or any of its officers, agents, or servants, in respect thereto; provided, that the plaintiff shall within ten (10) days from the date of this order execute and file with the clerk of this court a bond with good and sufficient surety, approved by said clerk, in the sum of Five hundred dollars ($500.00), conditioned for the payment to the defendants of all costs and damages they may sustain by reason of the granting of this interlocutory injunction, in case it should be finally held that it ought not to have been granted.

2. That as to the stamp taxes demanded upon those notes set forth and described in the bill of complaint which were signed by the plaintiff's officers at Graniteville, S. C., and mailed from there to banks outside of the State of South Carolina, the application for an interlocutory injunction be and the same is hereby refused, and the said restraining order heretofore granted be and the same is hereby dissolved, insofar as it restrains or enjoins the assessment or collection of stamp taxes in respect to the said last mentioned notes.

Dated this 17th day of October, 1930.

John J. Parker, United States Circuit Judge for the Fourth Circuit. Elliott Northcott, United States Circuit Judge for the Fourth Circuit. Ernest F. Cochran, United States District Judge for the Eastern District of South Carolina.

[fol. 58] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND SUPERSEDEAS.—Filed November 10, 1930

To the Honorable John J. Parker, Circuit Judge; To the Honorable Elliott Northcott, Circuit Judge; To the Honorable Ernest F. Cochran, District Judge:

And now comes Graniteville Manufacturing Company, the plaintiff and petitioner herein, by P. F. Henderson and Hendersons & Salley, its attorneys, and feeling aggrieved by the opinion and order of this Court entered on the 17th day of October, 1930, in so far as the same refused to grant a preliminary injunction prayed for in plaintiff's and petitioner's bill herein, hereby prays that an appeal may be allowed it from said decree to the Supreme Court of the United States, and that the Clerk of the District Court be directed to prepare and certify a transcript of the records and proceedings in said cause to the said United States Supreme Court at Washington, D. C., in accordance with its rules and practice, and for the reasons specified and set out in the assignment of errors filed herewith, in order that the errors complained of in the said assignment of errors may be reviewed and, if error be found, corrected accord-

ing to the laws and customs of the United States, and that [fol. 59] all further proceedings herein after the allowance of said appeal be transferred to the said Supreme Court of the United States of America.

Petitioner further prays that an order of supersedeas may be granted herein pending the final disposition of the cause, and that the amount of the security therefor, and for costs, be fixed by the order allowing this appeal.

Graniteville Manufacturing Company, by P. F. Henderson, by Hendersons & Salley, its Counsel.

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL AND TO OPERATE AS SUPERSEDEAS.—Filed November 10, 1930

The plaintiff and petitioner herein having prayed for the allowance of an appeal to the Supreme Court of the United States from the decree made and entered in said cause by the Statutory Court sitting in and with the District Court for the Eastern District of South Carolina, on the 17th day of October, 1930, in so far as the same refused to grant a preliminary injunction as sought and prayed for in plaintiff's complaint or bill herein, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal pursuant to the Statutes and Rules of the Supreme Court of the United States in such cases made and provided, it is now hereby

Ordered

That an appeal be, and the same is hereby allowed as prayed for to the Supreme Court of the United States in this cause and as provided by law; and,

It is further ordered that the Clerk of this Court shall prepare and certify a transcript of this record and proceed-[fol. 61] ing and decree in accordance with the Statutes and Rules of the Supreme Court of the United States, and transmit the same to the Clerk of the Supreme Court of

the United States at Washington, D. C., so that he shall have the same in said Court within thirty days from this date; and,

It is further ordered that this order operate as a supersedeas, and that the supersedeas bond be, and the same is hereby fixed in the sum of $5,000.00; and,

It is further ordered that the security for costs be, and the same is hereby fixed in the sum of $250.00.

Dated Oct. 29, 1930.

John J. Parker, U. S. Circuit Judge for 4th Circuit; Elliott Northcott, U. S. Circuit Judge for 4th Circuit; Ernest F. Cochran, U. S. District Judge for the Eastern District of S. C.

[fol. 62] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Nov. 10, 1930.

And now comes Graniteville Manufacturing Company, the plaintiff and petitioner herein, through its counsel, and presents this assignment of errors, and says that in the records and proceedings in the above entitled cause and the resultant decree made and entered against it on the 17th day of October, 1930, there is error in the particulars hereinafter set out—that is to say; (reference always being had only to the notes executed by plaintiff within the State of South Carolina as to which the Court refused to enjoin the threatened collection of a tax):

I

That the Court erred in making the decree herein.

II

That the Court erred in holding that the notes set up and described in the bill or complaint herein had a taxable situs in South Carolina.

[fol. 63]

III

That the Court erred in not holding that the notes set up in the bill or complaint herein had no taxable situs in the State of South Carolina, and that each of them as in-

tangibles had a taxable situs only in the State of the domicile of the owner; that is to say in the States of New York, Massachusetts, or Georgia; and that for the State of South Carolina to attempt to tax each and all of said notes under its Documentary Stamp Tax Acts was in effect the taxing of property existant only beyond its borders, and was the taking of property without due process of law, rendering said Documentary Stamp Tax Acts and all proceedings thereunder in this regard to be repugnant to the Fourteenth Amendment of the Constitution of the United States.

IV

That the Court erred in not holding as that each of the notes set up and referred to in the complaint or bill were negotiated within and were payable in States other than South Carolina, were subject to acceptance or confirmation upon their receipt by the bankers to whom they were made in other states, and were revocable by their maker until their acceptance by each of said bankers—all beyond the limits of South Carolina—, that they were not and never became notes in South Carolina, and that the effort to tax them under the Docmentary Stamp Tax Acts of South Carolina rendered said Acts and the proceedings thereunder the taking of property without due process of law, and rendered the same repugnant to the Fourteenth Amendment of the Constitution of the United States of America.

V

That the Court having held that the documentary stamp [fol. 64] tax in question was not a license tax but was a tax "levied directly upon the documents themselves" erred in holding that the tax was a tax upon "the creation" of the notes in question in South Carolina and was hence legal.

VI

That the Court erred in holding that the maxim mobilia sequuntur personam must yield to the fact that the notes in question were being created in South Carolina, in part, at least, thereby lending the maxim, in question, to the creation of double taxation should the state of the domicile of the banks to which said notes were drawn have or hereafter enact documentary stamp tax acts.

VII

That the Court erred in holding that because the tax in question was neither a property nor an inheritance tax that the maxim mobilia sequuntur personam was not applicable under the decisions of the Supreme Court.

VIII

That the Court erred in holding that because the papers in question were executed in South Carolina, they were taxable in that state, although they became the property of bankers in other states and were negotiated and made payable in other states, were there subject to acceptance or refusal after their receipt in the mails, and were until said time subject to revocation.

IX

That the Court having held that under the Documentary Stamp Tax Acts that plaintiff had no adequate remedy [fol. 65] at law, erred in refusing to grant a preliminary injunction restraining the defendants personally and as members of the South Carolina Tax Commission from proceeding to collect the tax set up and referred to in the complaint or bill, it having appeared and having been admitted that all of said papers, although executed within the State of South Carolina became the property of bankers residing beyond the limits of the State of South Carolina, and although it appeared and was admitted that said papers were subject to final acceptance after they reached the bankers in question through the United States mails, and that said notes were revocable by the plaintiff until they were finally accepted by said bankers and until the proceeds thereof had been placed to plaintiff's credit.

It is respectfully submitted by the plaintiff that under the facts stated herein which were admitted in the pleadings and proceedings herein, that the effort on the part of the State of South Carolina to collect the tax in question amounted to the taking of property without due process of law and rendered said proceeding and the Statutes upon which it was based repugnant to the Fourteenth Amendment of the Constitution of the United States;

For which errors the plaintiff, petitioner, and appellant prays that the decree of the District Court of the United

States for the Eastern District of South Carolina and of the Statutory Court sitting in and with said Court, dated the 17th day of October, 1930, in the above entitled cause, be reversed, and that the cause be remanded with directions to said Court to grant said preliminary order of injunction sought; and for such other and further relief as may be proper in the premises.

P. F. Henderson, Hendersons & Salley, Counsel for Plaintiff, Petitioner and Appellant.

[fol. 66] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL WITH ACCEPTANCE OF SERVICE—Filed Nov. 10, 1930

To W. G. Query, J. P. Derham, and F. C. Robinson, Personally and as Members of the South Carolina Tax Commission, or their attorneys:

Please take notice that the plaintiff and petitioner in the above entitled suit has appealed and does hereby appeal to the Supreme Court of the United States from the decree entered by the Statutory Court sitting in and with the District Court of the United States for the Eastern District of South Carolina, on the 17th day of December, 1930, in so far as the same refused to grant the preliminary injunction sought by the plaintiff or petitioner herein.

Attached hereto are copies of the petition for appeal, proposed order, assignments of error, citation, and supersedeas and costs bond.

Dated at Aiken, S. C. October 28th, 1930.

P. F. Henderson, Hendersons & Salley, Counsel for Graniteville Mfg. Co.

[fol. 67] Acceptance of Service

Service of the notice of appeal with papers attached as listed in the above entitled cause is hereby accepted, this 28 day of October, 1930, for and in behalf of the defendants or respondents therein.

W. G. Query, J. P. Derham, and F. C. Robinson, as Members of the South Carolina Tax Commission, by J. Fraser Lyon, Their Counsel.

[fols. 68 & 69] Supersedeas and cost bond on appeal for $5,250, approved and filed November 14, 1930, omitted in printing.

[fols. 70 & 71] Citation, in usual form, showing service on J. Fraser Lyon, filed November 15, 1930, omitted in printing.

[fol. 72] IN UNITED STATES DISTRICT COURT

PRÆCIPE OF APPELLANT—Filed Nov. 21, 1930

The Clerk of the District Court of the United States for the Eastern District of South Carolina will please proceed to make up the transcript of record in the above entitled cause, including therein:

(1) Amended complaint of bill in equity.

(2) State that same was accompanied by proper subpœna and that service of the same was duly accepted by the defendants.

(3) Amended answer of defendants.

(4) Agreed statement of facts.

(5) Statement that Hon. Ernest F. Cochran, District Judge of the Eastern District of South Carolina granted a temporary restraining order and an order calling to his assistance Hon. John J. Parker and Hon. Elliott Northcott, Circuit Judges of the Fourth Circuit, and after the giving [fols. 73-80] of the required notice both to the Governor and to the Attorney General of South Carolina, this cause was heard upon an application for an interlocutory injunction before said Court so constituted, on July 17, 1930.

(6) Opinion of Court and order thereon, both filed on October 17, 1930.

(7) Petition for appeal and supercedeas and order granting the same filed November —, 1930.

(8) Assignment of errors and petition for reversal filed with petition for appeal.

(9) Notice of appeal with acceptance of service thereof.

(10) Supercedeas and costs bond with approval thereof.

(11) Citation with acceptance of service.

(12) This præcipe.

(13) Designation of points relied on for reversal.
(14) Clerk's certificate.

P. F. Henderson, Hendersons & Salley, Plaintiff's-Petitioner's Attorneys.

Due legal service of a copy of the foregoing præcipe accepted, this 19 day of November, 1930.

J. Fraser Lyon, John M. Daniel, Attorneys for Defendants-Respondents.

[fol. 81] IN UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Dec. 29, 1930

Counsel for the plaintiff in error herein designate as the points upon which they rely to reverse the judgment of the Statutory Court which heard this cause, the points set out in the assignments of error (in which the same are more fully set out), to-wit:

That the Court erred in making the decree herein and erred in holding that the notes herein had a taxable situs in South Carolina, and in failing to hold that each of said notes as intangibles had a taxable situs only in the domicile of the State of its owner, to-wit: In New York, Massachusetts or Georgia, and that for the State of South Carolina to attempt to tax said notes amounted to the taking of property without the due process of law and rendered the Documentary Stamp Tax Acts of South Carolina and all proceedings thereunder in this regard to be repugnant to the Fourteenth Amendment of the Constitution of the United States.

Further, that the Court erred in not holding that inasmuch as the notes in question were negotiated within and payable in other states other than South Carolina, subject [fol. 82] to acceptanc of or confirmation upon their receipt by the bankers to whom they were made and were revocable by their makers until their acceptance by each of said bankers, all beyond the limits of the State of South Carolina, that said notes or papers were not and never became notes in South Carolina, and that the effort to tax them under the Documentary Stamp Tax Acts of South Carolina

rendered said Acts and all procedure thereunder the taking of property without due process of law, and rendered the same repugnant to the Fourteenth Amendment of the Constitution of the United States of America.

That the Court furher erred after correctly holding that the tax in question was not a License Tax but was a tax "levied directly upon the documents themselves," in holding that the tax was a tax "upon the creation" of the notes in South Carolina, and was hence legal; and in holding that the maxim mobilia sequuntur personam must yield to the fact that the notes were created in South Carolina, thereby lending said maxim to the creation of possible double taxation; and that the Court erred in holding that because the tax in question was neither a property tax nor an inheritance tax, that the maxim was not applicable; and that the Court erred in holding that because the papers were executed in South Carolina that they were taxable in that State; and that the Court, having held that there was no adequate remedy at law, erred in refusing to grant an interlocutory injunction restraining the defendants personally and as members of the State Tax Commission from proceeding to collect a tax, both because the notes referred to could have no taxable situs in South Carolina, and because they never became in reality notes within the State of South Carolina.

And appellant designates as the parts of the record [fols. 83 & 84] which it thinks necessary for the consideration of this appeal the amended bill with supporting affidavits and statement, the amended answer, the amended agreed statement of facts, the statment as to the subpœna and as to its service, the statement as to the issuance of a temporary restraining order and application for an interlocutory injunction, the opinion and order of the Court, the petition for appeal and supersedeas, and order allowing the same, the assignment of errors and notice of appeal and acceptance of both, the supersedeas and cost bond, the citation with acceptance of service, the præcipe and this designation.

P. F. Henderson, Hendersons & Salley, Appellant's Attorneys.

Due, legal service of a copy of the foregoing designation of points relied on for reversal of parts of record neces-

sary to consideration of the appeal is hereby accepted, this 23 day of December, 1930.

John M. Daniel, Atty. Gen'l; J. Fraser Lyon, Appellees' Attorneys.

[fol. 85] [File endorsement omitted.]

Endorsed on cover: File No. 35,518. E. South Carolina D. C. U. S. Term No. 596. Graniteville Manufacturing Company, appellant, vs. W. G. Query, J. P. Derham, F. C. Robinson, personally and as members of the South Carolina Tax Commission. Filed December 15, 1930. File No. 35,518.

(351)